



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Misc Cause 888 of 2003

KIPKORIR, TITOO & KIARA ADVOCATES.....ADVOCATE

VERSUS

DEPOSIT PROTECTION FUND BOARD.....CLIENT

RULING

This is a reference by the advocate with the bill seeking that the taxation of 6th September 2005 to be set aside and that the same be remitted for taxation before another taxing master.

The advocate argued that the authorities of the court show that the court cannot interfere with the decision of the taxing officer on taxation unless it is shown either the decision was based on error of principle, or the fee awarded was so manifestly excessive as to justify an interference that it was based on an error or principle.

Advocate stated that the first error of the taxing master was the reliance on the directions of the high court's ruling, in a previous reference, and reliance on the court of appeal, in an appeal against that previous reference.

Further that the taxing master relied on pleadings supplied to her and not the main file. That she ought to have paid attention to the main file where the advocate represented the client.

That the taxing master relied on paragraph 1 (1) of schedule 6A. that under that schedule there is no paragraph 1 (1).

That she considered that the advocate stopped to act for the client at interlocutory stage, found that the client was a peripheral party and mentioned that the defence filed by the advocate was 1 ½ page.

Further that the taxing master followed the obiter of the court of appeal.

That the taxing master ought not to have considered the offer of kshs 100, 000 made by the client.

The advocate relied on the following cases:

(1) PREMCHAND RAICHAND LTD & ANOTHER – AND – QUARRY SERVICES OF EAST AFRICA LTD [1972] EA 162.

The court of appeal held in that case that:

“the court will only interfere when the award of the taxing officer is so high or so low as to

amount to an injustice to one party.”

(2) STEEL CONSTRUCTION PETROLEUM ENGINEERING E.A. LTD – V – UGANDA SUGAR FACTORY LTD.

The holding of that case was:

“the court would not have been entitled to interfere on the ground solely that the instruction fee was too high.”

(3) JORETH LTD – V – KIGANO & ASSOCIATES NBI CIVIL APPLICATION NO. 66 OF 1999

Where the court stated that the subject matter for purpose of determining the instruction fees ought to be from the pleadings, judgement or settlement. The court held.

“.....but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

The advocate stated that a party need only show one error to have taxation set aside and said he had shown more than one error.

The counsel for the client supported the taxation and stated that the taxing officer was right on spot and criticized the grounds upon which the advocate was seeking setting aside. He said that those grounds were mis conceived.

Client submitted that an application for injunction, the one the advocate represented the client was not quantifiable. Since it was not disputed that the advocate only represented the client for interlocutory matters, counsel for the client argued that he was not entitled to the full instruction fees. He found support for this proposition in the case MAYERS & ANOTHER – V – HAMILTON & OTHERS [1975] 13. The court of appeal stated:

“The entitlement under the instruction fees grows as the matter proceeds.”

In considering the advocates argument I think the only issue that would support him is that the taxing officer considered paragraph 1 (1) of schedule 6A which is not in existence. I have perused the hand written ruling of the taxing master and I found that she referred to paragraph 1 (L) which was wrongly typed as 1 (1). That finding is supported with the fact that paragraph provides for fees of kshs 6, 000 which is what the taxing officer considered.

I have considered all the other arguments by counsel and I find that they show no basis for interfering with the taxation. I am unable to see how the taxing officer wrongly exercised the discretion afforded to her. The fact that she did not award the advocate the amount he expected is not a reason enough to upset that taxation. The advocate did not contradict the finding that there was no value of subject matter. That being so indeed the correct paragraph to proceed by is paragraph 1 (L). The taxing master however took the amount offered by the client and increased this by half. What wrong did the taxing master do. The advocate was not, even in his submissions, candid on that.

The advocates application chamber summons dated 3.3.2006, for the reasons stated herein above is dismissed with costs to the client respondent.

MARY KASANGO

JUDGE

Dated and delivered this 14th day of July 2006

MARY KASANGO

JUDGE